



February 16, 2021

Board of Governors
Federal Reserve System
20th Street and Constitution Avenue, NW
Suite 3E-218
Washington, D.C. 20551

SUBJECT: Community Reinvestment Act Regulations
1723 (AF94) Reg BB - Community Reinvestment Act

To Whom It May Concern:

These comments are submitted on behalf of the National Association of State and Local Equity Funds, ("NASLEF"), an association of state and local based nonprofit organizations that raise equity capital for investment in Low-Income Housing Tax Credit ("Housing Credit") properties.

Background. NASLEF's 10 members operate in 38 states where our leadership in affordable housing advocacy, connection with community organizations, and knowledge of local markets creates high quality, strategic community investments, especially in underserved markets. Collectively NASLEF members represent about 10% of the national Housing Credit market, and have raised and invested almost \$17 billion in affordable housing and over \$1 billion in other community and economic developments. Many of our members have an orientation toward financing development of the most difficult, high impact projects with a focus on underserved markets. In addition to our work financing Housing Credit developments, our members are involved in other community development activities that rely on bank participation incentivized by the Community Reinvestment Act ("CRA") including New Markets Tax Credit ("NMTC") investments and Community Development Financial Institution ("CDFI") lending.

NASLEF welcomes the opportunity to comment on the Federal Reserve Board's Advance Notice of Proposed Rulemaking (ANPR) regarding CRA, a law which we believe is critically important to the continued success of the Housing Credit program which is by far the most important federal program for affordable housing development and preservation. Commercial banks, encouraged by CRA requirements, provide around three-quarters of the equity capital for the Housing Credit program so any change in CRA that inadvertently reduces that demand could have a devastating impact on affordable housing development. While we may be able to maintain a sufficient amount of equity capital for the Housing Credit program, the question is what the

price of that capital will be and what type of projects will be built. Weakened CRA incentives will make it more difficult to develop higher-impact, complex projects that address the highest needs of communities, such as homelessness, special needs populations, and other smaller projects from community-based organizations. Instead it will favor larger, higher AMI, and simpler projects developed by large developers.

Our bank partners include intermediate small banks currently evaluated under the community development (“CD”) test, large banks evaluated under the lending, investment and service tests, and wholesale and limited purpose banks evaluated under the CD test. Since we raise equity capital for the Housing Credit program, our focus is on the Investment and Community Development tests for CRA, but the CDFIs operated by our members to support affordable housing, and the projects we fund must also have access to debt so we are also concerned about potential impact of CRA changes on the supply of debt capital for multifamily housing development.

As our members work with commercial banks to arrange equity financing for affordable housing, we are well aware of issues that arise which sometimes suggest a less than optimum application of the rules in ways that impede our business, cause a misallocation of capital among geographic areas, suggest inconsistent application of the rules, impose unnecessary burdens on banks, and create confusion about qualification for CRA credit. We support modifications to clarify and simplify the regulations, but those objectives should not outweigh the fundamental purpose of CRA which is to make sure that insured depository institutions serve the communities in which they are located. The fundamental objective of CRA reform should not be to remove burdens from commercial banks to make their lives easier even if that is an appropriate value. Any rewrite of CRA regulations must be focused on continuing to ensure banks serve LMI communities.

RESPONSE TO SELECTIVE QUESTIONS

Question 8. *Should delineation of new deposit- or lending-based assessment areas apply only to internet banks that do not have physical locations or should it also apply more broadly to other large banks with substantial activity beyond their branch-based assessment areas? Is there a certain threshold of such activity that should trigger additional assessment areas?*

While we don’t have a specific recommendation with respect to a threshold of activity, we do believe assessment areas based on the location of loan production offices, ATMs, and back-office operations would help expand the reach of CRA into rural and other areas of the country that have fewer bank resources. This will assist demand for investment in LIHTC properties that currently find it more difficult to attract such equity capital.

Question 13. *Is \$750 million or \$1 billion an appropriate asset threshold to distinguish between small and large retail banks? Or should this threshold be lower so that it is closer to the current small bank threshold of \$326 million? Should the regulation contain an automatic mechanism for allowing that threshold to adjust with aggregate national inflation over time?*

We do not support an increase in the small bank threshold because we are concerned this will remove incentives for small banks to invest in the LIHTC, NMTC, and CDFI programs, especially undermining such activities in smaller, rural states which do not have much of a large bank presence. If the small bank threshold is substantially increased, it could be considerably more difficult to raise equity capital in certain areas of the country, requiring higher credit prices which would make affordable housing development using the LIHTC more difficult and result in less housing for low and moderate income households.

Question 42. *Should the Board combine community development loans and investments under one subtest? Would the proposed approach provide incentives for stronger and more effective community development financing?*

No, we are concerned that combining debt with equity will undermine bank incentives to make equity investments, especially since the volume of qualifying bank debt would be considerably greater than the volume of equity. In that situation, banks striving to meet their CRA obligations would find it easier to increase their debt activities rather than their investment activities; that is, a smaller percentage increase in debt volume that is shorter duration and simpler will yield the same CRA credit as a larger increase in investment volume, putting investments at a disadvantage. Separate buckets are vital. Return profiles are not created equally, so having both a loan and investment test helps to diversify efforts (and not create an overweight in one bucket that may be market driven by returns/spreads). Further, Basel III capital requirements that assign higher capital requirements on a bank's investment in housing -- bank investments in housing credits are assigned a risk weight of 100% that does not diminish over time, as is the case with debt -- favor debt over equity investment.

Question 43. *For large retail banks, should the Board use the ratio of dollars of community development financing activities to deposits to measure its level of community development financing activity relative to its capacity to lend and invest within an assessment area? Are there readily available alternative data sources that could measure a bank's capacity to finance community development?*

The metric for the Community Development Test should be the numerator of community development equity investments, and equity equivalent investments, relative to the denominator of deposits. We believe using an established bank lending line of commercial loans and products in the numerator would discourage banks from making more complex equity investments for CDFI, LIHTC, NMTC and SBIC purposes.

Lending to community development organizations that are undertaking some form of economic development in low- and moderate-income areas should be considered under the community development test. In contrast, standard bank commercial lending in low- and moderate-income areas is lending, NOT an investment.

Question 45. *Should the Board use local and national benchmarks in evaluating large bank community development financing performance to account for differences in community development needs and opportunities across assessment area and over time?*

Yes, we support using local and national measures in two different metrics. However, the local metric of investing should be the main focus of the local assessment area's CRA rating. Banks will have different concentrations of deposit-taking facilities between areas. The local deposit-taking metric is the most important, as that is the main focus of CRA and the community development test.

The fractions illustrated in the proposed regulations seem appropriate. As expressed in other answers, we do not believe general commercial or bank lending products should be included in the numerator, only investments: equity investments, including equity equivalent activities.

Question 46. *How should thresholds for the community development financing metric be calibrated to local conditions? What additional analysis should the Board conduct to set thresholds for the community development financing metric using the local and national benchmarks? How should those thresholds be used in determining conclusions for the Community Development Financing Subtest?*

Setting specific metric thresholds for CRA evaluations is a positive move to help bankers gauge how much to lend and invest in low- and moderate-income areas. Using the existing definitions of large, medium, and small bank groupings, one bank's metric can be compared to another "group metric" of banks in the same category by asset size and geographical area.

The geographical areas are the most important factor for the "group metric." The Board should use comparisons among all of the banks in a specific geographic area in order to determine a local CRA rating. For example, New York banks should not be compared to banks in Richmond, Virginia.

Annually, when the tables are updated, each bank can view its metric in relationship to the group metric for banks in the defined asset class based on geography. For each bank every year, a new metric for that new year's investing should be illustrated. Then, the metric since that bank's last exam should be illustrated. Thus, each bank would have two metrics per year. The group metric for banks of similar size in the same geographic area, and the national metric. This should include both the annual metric and a 3- or 4-year group moving average of investing. Local economic conditions will affect all banks equally, and the local metrics will show that.

Question 47. *Should the Board use impact scores for qualitative considerations in the Community Development Financing Subtest? What supplementary metrics would help examiners evaluate the impact and responsiveness of community development financing activities?*

Yes, we strongly believe that CRA rules should continue to encourage banks to undertake complex and innovative investments that have the most consequential impact on communities in alignment with state and regional economic development plans. The use of multipliers, impact evaluations, and supplementary metrics should only be assigned to the most complex community development transactions.

Community development investments and equity equivalent transactions are not normal banking practice, and banks should be awarded some additional community development test credit (impact points) for making LIHTC and NMTC investments as well as underwriting a CDFI for a possible loan or investment.

Question 52. *Should the Board include for CRA consideration subsidized affordable housing, unsubsidized affordable housing, and housing with explicit pledges or other mechanisms to retain affordability in the definition of affordable housing? How should unsubsidized affordable housing be defined?*

The Board should include for CRA consideration rental housing subsidized under a tribal government, local, state or federal program that is “affordable” to households with incomes up to 80% of area median income. Affordability should be based on the HUD standard using maximum rents (including utilities) that do not exceed 30% of household income.

Eligibility of unsubsidized, naturally occurring affordable rental housing presents more difficult questions since such property presumably does not include government imposed restrictions on future rent increases and it could be unwieldy for lenders to insist on such conditions. For unsubsidized rental housing, eligibility should be based on whether rents are affordable (AMI or FMR) and the location of the property in LMI areas or where the median renter is LMI. Ideally there should be enforceable pledges or other mechanisms to retain affordability in the definition of affordable housing.

Question 54. *Should the Board specify certain activities that could be viewed as particularly responsive to affordable housing needs? If so, which activities?*

Bank investments in LIHTC properties and investments/loans to CDFIs should be viewed as particularly responsive to affordable housing needs. Additional credit should be given to investment in more difficult to develop affordable housing that has deeper income targeting (below 40% of AMI), serves residents, including the homeless, in need of supportive services, and otherwise fulfills a critical housing need.

We also believe that CRA incentives can be significantly strengthened if banks are not given full credit for purchasing qualifying mortgage-backed securities, especially those MBS purchases made just prior to their CRA examinations, often which are then sold shortly afterwards to another bank. We believe these practices have little positive impact in the community.

Question 55. *Should the Board change how it currently provides pro rata consideration for unsubsidized and subsidized affordable housing? Should standards be different for subsidized versus unsubsidized affordable housing?*

We support providing pro rata credit for unsubsidized and subsidized affordable housing which permits a bank to receive a pro rata share where less than a majority of the dollars benefit LMI families or less than a majority of the beneficiaries are LMI. Where subsidized units are more than a majority, we recommend that there be no pro rata credit for those units affordable only for income levels above 80% AMI. We don't share the concern that buildings with units affordable to households with incomes above 40% AMI concentrates poverty.

We believe all bank activity in support of LIHTC development should receive full CRA credit regardless of the make-up of the development. Affordable rental housing undertaken in conjunction with an explicit federal, state, or local government affordable housing policy or program should receive full CRA credit if at least 20 percent of the units will be affordable for the term of the bank's financing. The primary federal affordable housing production policies – LIHTC, tax-exempt multifamily housing bonds, and the HOME Investment Partnerships program – all use 20 percent as their eligibility thresholds. More states and localities are supporting affordable housing through direct funding, tax relief, and inclusionary zoning requirements. Aligning CRA with other governmental policies would promote consistency, clarity, simplicity, and efficiency.

Question 67. *Should banks receive CRA consideration for loans, investments, or services in conjunction with a CDFI operating anywhere in the country?*

Yes, bank should receive CRA community development test credit for lending and funding CDFI investment anywhere in the country.

Question 71. *Would an illustrative but non-exhaustive list of CRA-eligible activities provide greater clarity on activities that count for CRA purposes? How should such a list be developed and published, and how frequently should it be amended?*

The development of a list of CRA-eligible activities would provide appropriate clarity with the caveat that a list that too broadly identifies activities of questionable community development would undermine the rule.

CONCLUSION

In spite of generally shared criticisms of the current rules, the Community Reinvestment Act has fundamentally been a major success. It has increased the level of bank activity that serves LMI communities, and has been absolutely critical to the success of the Low-Income Housing Tax Credit program. The future of affordable housing in this country depends on CRA continuing to incentivize LIHTC lending and investment and we urge you to be cautious that potential changes to CRA not undermine that activity.

Thank you for your attention to our comments.

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CAHEC

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Evernorth

Hawaii Housing Finance

Massachusetts Housing Investment Corporation

Merritt Community Capital Corporation

Mountain Plains Equity Group

Ohio Capital Corporation for Housing

St. Louis Equity Fund

VCDC